IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE CIVIL JURISDICTION

WRIT PETITION NO. 7399 OF 2002

Appasaheb Baburao Kanade... Petitioner.

Versus

Smt.Tarabai Hiralal Gawli.... Respondent.

None for the Petitioner.
Mr. V.G.Mujumdar for the Respondent.

CORAM : B.H.MARLAPALLE, J.

DATED : 20TH APRIL, 2007.

P.C.:

None present for the petitioner. Mr. V. G. Mujumdar, learned Counsel appears for the respondent.

2. Civil Suit No. 228 of 1992 which was filed for seeking decree of eviction on the ground of bonafide requirements as well as arrears of rent came to be dismissed by the learned 5th Additional Judge, Small Causes Court at Pune and therefore, the plaintiff filed Civil Appeal No. 883 of 1993 which came to be allowed by the learned 7th Adhoc Additional District Judge, Pune vide his judgment and order dated 11th September, 2002. By the lower appellate court order

the suit was partly decreed and the defendant was directed to handover vacant and peaceful possession of the suit premises to the plaintiff within three months.

3. In this writ petition the decree passed by the lower appellate court under the Bombay Rents Hotels & Lodging House Rates (Control) Act is challenged. In Writ Petition No. 4138 of 2006, I have already taken a view vide order dated 24th August, 2006 that such decree can be challenged by filing a civil revision application under Section 115 of the Code of Civil Procedure. I have further observed that when such a statutory remedy is available, the writ petition under Article 227 of the Constitution of India need not be entertained.

4. Hence, the writ petition is disposed of as such with liberty to the petitioner to file a civil revision application and if such a civil revision application is filed within a period of four weeks from today, the period of pendency of this writ petition be taken into consideration for condonation of delay, if any.

5. The ad-interim order granted earlier will continue

to operate for a period of two weeks more from today.

6. Annexures to the petition memo be returned, if applied for.

7. Writ petition is disposed of, accordingly.

Sd/-

(B. H. MARLAPALLE, J.)